IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1175 OF 2003

IN

SUIT NO. 1088 OF 2003

Himanshu Sharma & Anr. .. Plaintiffs

versus

Kalavati P. Kankiya & ors. .. Defendants

...

Mr.A.K. Saxena for the plaintiff.

Mr.Prasad Pathare i/b R. Matkar for the defendant no.1.

CORAM : D.G. KARNIK,J.

DATED : 18th March 2005.

P.C.:

1. Heard the learned counsel for the plaintiff and defendant no.1. Neither the defendant no.1 nor defendant no.2 have filed any affidavit in reply. In the circumstances, the averments made in the affidavit in support of the motion are deemed to be

admitted.

2. The plaintiff is the owner of the suit premises and the defendant no.1 was the tenant. However, the defendant no.1 purporting to claim ownership sold the suit premises to the defendant no.2 and the defendant no.2 purchased the same. In the circumstances, the plaintiff has filed this suit for a declaration that he is the owner of the suit premises and for a declaration that the agreement between defendant nos.1 and 2 is null and void and not binding on him. Since the defendant no.1 was only a tenant, he could not have sold the ownership rights in the property to the defendant no.2. The defendant no.2 cannot get a title better than that of the defendant no.1. Since the defendant no.1 has fraudulently attempted to transfer the ownership right in the suit premises, it would be appropriate to appoint a Court Receiver to protect the interest of the plaintiff. Ofcourse, at this stage, it would not be appropriate to permit the receiver to dispossess the defendant no.2 who claims to be in actual possession of the suit property but to appoint the person in possession as an agent of the receiver. Hence, I pass the following order:-

3. The Court Receiver is appointed as a receiver of the suit premises. The Court receiver shall take formal possession of the suit premises and if the person found to be in possession of the suit premises is willing, to appoint as an agent of the receiver subject to his executing an agreement in the usual form but without furnishing any security. The Court receiver however may fix the provisional royalty equivalent to the rent charged to the defendant no.1 and permitted increase/taxes. If the person in possession fails to execute the agreement within a period of four weeks on being called upon by the Court Receiver to do so, or fails to pay royalty fixed by the Court receiver as mentioned above, the Court Receiver shall be entitled to take actual possession of the property.

D.G. KARNIK, J